

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION/ DE NOVO FINDINGS

Local governmentSan Luis Obispo County

Local DecisionS020154P/CO 02-0272 & D020256D, Approved with conditions (Exhibit 4)

Appeal NumberA-3-SLO-03-117

Applicant.....Brown Family Trust & James and Johanna Townsend

AppellantsCommissioners Sara Wan and John Woolley

Project location6925 Jordan Rd., northwest of Cambria Pines Rd.; approx. 1 mile north of the community of Cambria, (North Coast Planning Area), San Luis Obispo County

Project description.....Division of two parcels of 117.56 and 80 acres, into three parcels of 97.34, 45.22, and 55 acres; and a request to convert a 1,200 square foot residence to storage and transfer the water meter to the new parcel.

File documents.....San Luis Obispo County certified Local Coastal Program; San Luis Obispo County Coastal Development Permit Numbers: D940210P, COAL99-0090, S980282L, S020154P/CO 02-0272, and D020256D; Coastal Commission Coastal Development Permit Numbers: A-3-SLO-97-072, A-3-SLO-00-045, A-3-SLO-03-117; SLO-MAJ-1-03 (Phase 1 Periodic Review Implementation).

Staff recommendation ...Substantial Issue Raised; Denial.

Summary of Staff Recommendation

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the subsequent permit for the project be **denied**.

San Luis Obispo County approved a land division of two parcels of 117.56 (Brown) and 80 acres (Townsend). The two parcels have been subject to numerous development proposals in the past 10 years. In 1994, the County approved a lot line adjustment creating the current 2-parcel configuration. In 1997, the County approved two primary residences, a guesthouse, greenhouse, barn/workshop, pool, poolhouse, tennis court, gazebo, and access road on the Brown parcel. The smaller 80-acre parcel remains vacant. On June 13, 2002, the Commission approved a coastal development permit for a lot line adjustment (A-3-SLO-00-045) resulting in a new reconfiguration for the parcels (142 and 55 acres), and at the same time the Commission established the least environmentally damaging development



California Coastal Commission
October 2004 Meeting in San Diego

Staff: J. Bishop Approved by:

envelope in the southeast property corner of Townsend parcel (see Project Background for more detail). The permit A-3-SLO-00-045 was not exercised by the Applicant and has since expired (June 13, 2004 expiration).

At this time, the Applicants propose to subdivide the two parcels of 117.56 and 80 acres into three parcels of approximately 97.34 acres, 45.22 acres, and 55 acres. Development envelopes of 12.25 acres, 2 acres, and 5.5 acres have been designated within each of the new parcels. Mr. Brown's existing residential compound is located within the 12.25 acres development envelope. The 2 acre and 5.5 acre envelopes would support new residential development. The remaining lands would be placed in conservation or open space easements. As a means to acquire water service for the newly created 45.22 acre parcel, the Applicant is proposing to convert the smaller existing residence (1,200 sq. ft.) located on the Brown property to storage and then transfer the water meter to the new site. The larger residence onsite (10,000 sq. ft.) will remain in residential use. The parcels are located on the north side of Cambria Pines Road, approximately ½ mile east of Highway One, north of the community of Cambria, in San Luis Obispo County. The parcels are within the Rural Lands land use category and are located in a Sensitive Resource Area, as designated in the LCP, due to the surrounding environmentally sensitive Monterey pine forest habitat.

The project was appealed by Commissioners Wan and Woolley based on various alleged inconsistencies with the San Luis Obispo County certified Local Coastal Program (LCP). Staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeal has been filed, because as approved by the County the proposed land division is inconsistent with provisions of the LCP protecting environmentally sensitive habitat areas (ESHA), and requiring evidence of adequate water supplies.

The County approval is inconsistent with LCP Policy 1 for Environmentally Sensitive Habitat Areas (ESHA), because it creates new parcels, designates new residential building sites, and constructs access roads in ESHA. This development is not resource dependent and does not avoid and minimize impacts on the sensitive resources of the site, particularly within the Monterey Pine Forest habitat designated as ESHA by the LCP. The development is also inconsistent with ESHA Policy 4, because it will result in development (building envelopes, utility extensions, and access roads) within Monterey pine forest ESHA and LCP required setback areas. Finally, the County approved project is inconsistent with ESHA Policy 33 and CZLUO Section 23.07.176 because the project allows for the unnecessary removal of up to 30 mature Monterey pines to support the new residential developments.

In addition, the project is inconsistent with the North Coast Area Plan (a component of the Land Use Plan portion of the LCP) site planning standard for new land divisions near Cambria because the proposed development envelopes are not located near the Urban Reserve Line (URL), nor are they clustered to minimize tree removal. Instead, the County approved project locates development envelopes in the interior of the parcels, roughly one-half of a mile from the URL. This location requires significant groundcover/habitat disturbance and extensive removal of endangered Monterey pine trees, particularly young Monterey pine saplings which are important to long-term forest health and future regeneration. Proposed access roads would unnecessarily fragment the habitat.

The conversion of an existing 1,200 square foot residence to "storage" as a way to transfer water service to a newly created parcel raises concerns with respect to the LCP requirement to demonstrate the



existence of adequate water supplies in Cambria. Any residential development on the new parcel, including allowable residential accessory structures and landscaping, will likely be larger in size and use more water than the 1,200 square foot residence. As such, this water transfer scheme could intensify water use at a time when existing water withdrawals may be adversely impacting sensitive riparian habitats and the Cambria CSD has declared a water supply emergency, including a moratorium on new water hook-ups.

Staff further recommends that the Commission **deny** the project due to fundamental inconsistencies with the certified LCP that cannot be resolved. Approval of the project would result in the creation of new parcels within Monterey pine forest ESHA for residential development that is not resource dependent. Furthermore, the newly proposed disturbance envelopes of 7.75 acres (which combined with the existing residential disturbance of 12.25 acres) would result in roughly 20 acres of forest disturbance, and include two approximately ¼ mile long driveways paved and widened to accommodate new public utility extensions and fire access requirements. Removal of up to 30 mature native Monterey pine trees and numerous smaller pine saplings to support the project will degrade and fragment the surrounding Monterey pine forest and significantly disrupt the ESHA. Given the fact that the proposed subdivision does not comply with the most fundamental LCP ESHA protection provisions and creates new parcels in Cambria at a time when sustainable water supplies are not available, the project must be denied.

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IV. Exhibits

1. Vicinity Map
2. Land Use Designation Map
3. Project Plans
4. San Luis Obispo County Final Action (includes Findings and Conditions of Approval)
5. Appellants' Contentions
6. Aerial Depiction of Sensitive Resource Areas (SRA's) and Site Photos
7. Illustrative Guideline for Future Delineation of Parcel Two (Townsend) Building Site
8. Memo from CCC Staff biologist John Dixon (June 29, 2004)
9. Aerial Photo w/ ESHA Identification

I. Local Government Action

The County of San Luis Obispo Subdivision Review Board approved the proposed project, with conditions, on November 3, 2003. A Negative Declaration under CEQA was completed for the project on September 19, 2003, and was approved by the Board at the same time. Notice of the Board's action on the coastal permit was received in the Commission's Central Coast District Office on November 20, 2003. The Commission's ten-working day appeal period for this action began on November 21, 2003 and concluded at 5pm on December 8, 2003. A valid appeal (see below) from Commissioners Wan and Woolley was received during the appeal period.

II. Summary of Appellants' Contentions

Please see Exhibit 5 for the full texts of the appeals.

The appellants, Commissioners Wan and Woolley, have appealed the final action taken by San Luis Obispo County, on the basis that approval of the project is inconsistent with policies of the San Luis Obispo County Local Coastal Program with respect to environmentally sensitive habitat areas, and public services.

Appellants Wan and Woolley contend in part:

1. Policy 1 for Environmentally Sensitive Habitats (ESHA) and CZLUO Sections 23.07.170 – 178 require that development located within or adjacent to ESHA shall not significantly disrupt the resource, and only those uses dependent on such resources shall be allowed within the area. The County approved project would necessitate the creation of new parcels in ESHA for residential development that is not resource dependent. New building envelopes and paved access roads will degrade and fragment the surrounding Monterey pine forest and significantly disrupt environmentally sensitive habitat areas.
2. Policy 4 for ESHA prohibits land divisions within environmentally sensitive habitats, "unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat." The project is located within Monterey pine forest ESHA. Inconsistent with the LCP, the County approved project involves the division of land and future



development within ESHA and sensitive resource setback areas.

3. Policy 33 and CZLUO Section 23.07.176 require that rare or endangered vegetation shall be protected and that all development shall minimize disturbance to wildlife or plant habitat. CZLUO Section 23.07.164 requires that any proposed clearing of trees or other features be the minimum necessary to achieve safe and convenient access and not create significant adverse effects on the identified sensitive resource. The County approved project does not minimize disturbance to the sensitive Monterey pine forest habitat.
4. The North Coast Area Plan Site Planning Standard for new land divisions requires that proposed residential units shall be clustered adjacent to the Cambria Urban Reserve Line to minimize the need for new road construction and service extensions; or shall be clustered in open or semi-open areas to minimize tree removal. The County approved project is not clustered adjacent to the URL and does not minimize tree removal. Feasible alternatives are available that would avoid these impacts.
5. Public Works Policy 1 requires that new development demonstrate the availability of adequate public services, including domestic water supplies, prior to being permitted. Water for the newly created 45.22-acre parcel would be obtained by converting an existing 1,200 square foot residence on the Brown property to storage, then transferring the water meter to the new parcel. This scenario may intensify water use because any house built on the newly created parcel will likely be larger than 1,200 square feet, the proposed development may include accessory structures, and also includes landscaping. This transfer scheme raises concern particularly at a time when existing water withdrawals may be adversely impacting sensitive riparian habitats, and the Cambria CSD has declared a water supply emergency. Thus, this water meter transfer does not demonstrate the availability of adequate public services to serve new subdivisions in Cambria.

III. Standard of Review for Appeals

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is not designated as a principal permitted use in the LCP; and contains sensitive coastal resource areas designated by the LCP for the protection of the Monterey pine forest and the wetland/riparian habitats of Leffingwell Creek.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds



that “no substantial issue” is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program in order to issue a coastal development permit. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is not located between the first public road and the sea.

IV. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **a substantial issue** exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION: *I move that the Commission determine that Appeal No. A-3-SLO-03-117 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION of SUBSTANTIAL ISSUE: Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE: The Commission hereby finds that Appeal No. A-3-SLO-03-117 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan.

V. Staff Recommendation on De Novo Permit

The staff recommends that the Commission, after public hearing **deny** a coastal development permit for the proposed development.

MOTION: *I move that the Commission approve Coastal Development Permit Number A-3-SLO-03-117 for the development proposed by the Applicant.*

STAFF RECOMMENDATION OF DENIAL: Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT: The Commission hereby denies a coastal development permit for the proposed development on the grounds that 1) the development will not conform with the policies of the San Luis Obispo County Local Coastal Program, and 2) denial of the development is an action to which the California Environmental Quality Act (CEQA) does not apply.



Substantial Issue Findings and Declarations

The appeals by Commissioners Wan and Woolley raise a substantial issue, because as approved by the County, the project is inconsistent with provisions of the San Luis Obispo County certified Local Coastal Program with respect to environmentally sensitive habitat areas and public services.

Environmentally Sensitive Habitat Areas (ESHA's)

The project is located within Monterey pine forest habitat, which is defined by the LCP as an Environmentally Sensitive Habitat Area (ESHA). Inconsistent with ESHA Policy 1 and CZLUO Section 23.07.170d(2), the land division approved by the County would allow the creation of new parcels in an ESHA for residential development that is not resource dependent. Policy 4 for ESHA and CZLUO Section 23.07.170c specifically prohibit land divisions within environmentally sensitive habitats unless the buildable area areas of the new lots are located entirely outside the ESHA and buffer areas for the ESHA. Inconsistent with the LCP, the County approved project involves the division of land and future development within ESHA. New building envelopes and paved access roads will degrade and fragment the surrounding Monterey pine forest and significantly disrupt environmentally sensitive habitat areas, inconsistent with LCP requirements.

Policy 33, and CZLUO Sections 23.07.176 and 23.07.164, require that rare or endangered vegetation shall be protected and that all development shall minimize disturbance to wildlife or plant habitat. The County approved project involves the removal of up to 30 mature Monterey pine trees for underground utilities and driveways, as well as permanent clearing of at least 7.75 acres of grasses and forest habitat to accommodate newly created building envelopes and access roads. Inconsistent with the LCP, the size and location of the newly proposed parcels and development envelopes do not minimize disturbance to the sensitive Monterey pine forest habitat.

Finally, the North Coast Area Plan Site Planning Standard for new land divisions adjacent to Cambria requires that proposed residential units shall be clustered adjacent to the Cambria Urban Reserve Line to minimize the need for new road construction and service extensions; or shall be clustered in open or semi-open areas to minimize tree removal. The County approved project shows the proposed building envelopes in the interior of the parcel and further away from the URL than necessary. Inconsistent with the Planning Area Standard, the approved project also allows for 30 sensitive Monterey pine trees to be removed in order to accommodate the proposed access roads and utility connections. Moreover, the development is not proposed in open areas, as numerous pine saplings are identified in the development envelopes. In this case, alternative siting options are available that would avoid these impacts. Thus, substantial issue is raised.

(See the De Novo ESHA findings, incorporated herein by reference, for more detail.)

Public Services

San Luis Obispo County Public Works Policy 1 requires that new development demonstrate the availability of adequate public services, including domestic water supplies, prior to being permitted. In this case, the County required that domestic water for the newly created 45.22-acre parcel be obtained by converting an existing 1,200 square foot residence on the Brown parcel to storage, then transferring the water meter to the new parcel. This transfer scheme could intensify water use at a time when existing water withdrawals may be adversely impacting sensitive riparian habitats, and the Cambria CSD has declared a community-wide water supply emergency and a moratorium on new water hook-ups. Substantial issues are raised because it seems likely that the transfer will result in a net increase in



water use.

(See the De Novo Public Services findings, incorporated herein by reference, for more detail.)

VII. De Novo Findings and Declarations

The proposed land division is inconsistent with LCP Policy 1, 4, and 33 for Environmentally Sensitive Habitats; CZLUO Sections 23.07.170c, 23.07.170d, and 23.07.164; and North Coast Area Plan Rural Lands Standard 2, because of its potential to have significant adverse impacts on environmentally sensitive habitats. In addition, it has not been demonstrated that adequate public service capacities are available to serve the new parcels created through this land division (Public Works Policy 1).

A. Project Background

The proposed project involves two parcels originally owned by the applicant Joshua Brown. The existing 117.56-acre parcel still remains under Mr. Brown's ownership, however, the smaller 80-acre parcel was sold to the Townsend family trust in April 2000. The two parcels have been subject to a number of development proposals in the past 10 years. In 1994, the County approved a lot line adjustment creating the current 2-parcel configuration. In 1997, Mr. Brown received a Minor Use Permit to construct two primary residences (10,000 sq. ft. and 1,200 sq. ft. in size respectively), a guesthouse, greenhouse, barn/workshop, pool, poolhouse, and tennis court on the 117.56-acre parcel. During the processing of this Minor Use Permit, 60 acres of the 80-acre parcel (now owned by Townsend) was placed in a voluntary Conservation Easement by Mr. Brown. The Land Conservancy of San Luis Obispo County is the holder of this Easement. Staff has reviewed the language of the Easement and it appears that land divisions are prohibited by the easement. The Land Conservancy has yet to make a formal determination on this matter. The Easement area includes among other important habitat types, sensitive Monterey pine forest, that is contiguous with a much larger forest area, and covers 60 acres of the 80-acre Townsend parcel including the entire property boundary. The remaining 20 acres not covered by the easement is in the center of the parcel, which is not as heavily forested as other portions of the property.¹

On June 15, 2000, the Coastal Commission denied, on appeal from a 2000 County action, the Browns' permit application for another lot line adjustment, finding that this development would have a significant impact on important coastal resources and result in the creation of a non-conforming 55-acre parcel in an area where there is an 80-acre minimum parcel size. The Browns filed a mandate petition, directing the Commission to set aside its decision. On September 18, 2001, the trial court issued its ruling supporting three of the Coastal Commission's arguments, but granting the Browns' writ of mandate on the ground that the Commission's decision was not supported by substantial evidence, for it erroneously relied on the Local Coastal Plan instead of Coastal Zone Land Use Ordinance 23.04.025 in determining the applicable density (acreage) for the Browns' property. The trial court affirmed that the Coastal Commission: adopted proper findings by voting in a manner consistent with its staff report; had jurisdiction over the lot line adjustment which is "development" under the Coastal Act; and, was not

¹ It is important to note that the applicant voluntarily recorded the conservation easement over portions of the property outside of the desired 20-acre building site. This action was not part of any requirement by SLO County or Coastal Commission and does not obviate the need to conduct an analysis of alternative building sites that may better protect sensitive coastal resources.



collaterally estopped by a prior stipulation in a case concerning a landowner adjacent (Leimert) to the Browns from asserting that the minimum parcel size is 80 acres. On October 31, 2001, the trial court issued the peremptory writ of mandate commanding the Coastal Commission vacate its decision and reconsider its action in light of the court's Statement of Decision. The Commission decided not to appeal. In January 2002, the Coastal Commission and the Browns entered a settlement agreement providing that the Coastal Commission set a hearing to reconsider the Brown's permit in light of the trial court's ruling and judgment.

On June 13, 2002, pursuant to this settlement agreement, the Coastal Commission conditionally approved the Browns' proposed lot line adjustment. The Commission approved a lot line adjustment for the same properties resulting in new parcel configurations of 142 and 55 acres. In approving the lot line adjustment, the Commission made findings in support of a building site on the newly created 55-acre parcel (Townsend) located close to Cambria Pines Road that would minimize tree removal and habitat disturbance (see Exhibit 7). The Commission found that locating future development in this area would minimize the encroachment of non-resource dependent residential development into sensitive habitat areas, and prevent excessive Monterey pine forest fragmentation and disruption. The Applicant did not exercise this permit, and it has since expired (June 13, 2004 expiration).

B. Project Description and Location

The currently proposed project is located on the north side of Cambria Pines Road, approximately ½ mile east of Highway One, north of the community of Cambria, in San Luis Obispo County. Both parcels are within the Rural Lands land use category and overlap Sensitive Resource Areas, as designated in the LCP due to the presence of sensitive Monterey pine forest habitat. The smaller of the two parcels (Townsend) is vacant. A large residential compound currently exists on the larger 117.56-acre parcel (Brown). The residential compound encompasses roughly 12 acres of property and includes approximately 20,000 square feet of residential structures and accessory buildings. Large grassy lawns, groomed putting greens, and ornamental landscaping surround the property. A paved circular driveway links the residential compound with access to Cambria Pines Road at the southeast corner of the property.

The applicant now proposes to subdivide the two existing parcels totaling 197.56 acres (117.56 acres and 80 acres) into three parcels of 97.34 acres, 45.22 acres, and 55 acres. The proposed land division would create a new parcel (45.22 acres) between the two existing parcels. This would decrease the size of each existing parcel, as land for each is lost in the creation of the new parcel. As part of the subdivision, new access roads and future development envelopes totaling roughly 20 acres have been identified (See Exhibit 3 for existing and proposed lot configuration).

Currently, the Brown parcel is developed with two primary residences (10,000 s.f. and 1,200 s.f.), each with separate water meters. The Townsend parcel is vacant, but has a water meter through an agreement with the Cambria Community Services district (CCSD).² As a means to acquire water service for the

² On July 28, 1997 the applicant (Brown) and the Cambria Community Services district (CCSD) entered into an Agreement that resolved a dispute regarding what obligation, if any, the CCSD has to serve the applicant's property with water services. In that Agreement, the CCSD agreed to issue an "intent to serve" water letter for one (1) equivalent dwelling unit (EDU) of grandfathered residential water service (to the existing Parcel 2, which is now owned by the co-applicant Townsend). The Agreement further states that "Parcel 2 will remain as a single 80 acre parcel and Owner will not subdivide Parcel 2 by way of parcel map, tentative map and final subdivision map



newly created 45.22 acre parcel, the applicant is proposing to convert the existing 1,200 square foot residence located on the Brown property to storage, then transfer the water meter to the new site.

C. County-Approved Project

The County found that although the project was located within the Monterey pine forest resource, the proposed development envelopes were located in the least environmentally sensitive portions of the property. The County approved the proposed project with multiple conditions designed to address the issues highlighted by the appeal, including requirements for:

- Monterey pine tree removal not to exceed 30 trees; and replacement at a ratio of 2:1.
- Placement of 178 acres of property outside of the designated development envelopes into permanent open space and conservation easements.
- Landscaping and revegetation plans that use drought tolerant and non-invasive plants.
- Erosion and sedimentation control plans.
- Monitoring for subsurface cultural resources.
- Water conservation and evidence from the CCSD of offsetting water supply retrofitting.

See Exhibit 4 for complete text of County Findings and Conditions.

D. De Novo Findings

1. Environmentally Sensitive Habitat Areas (ESHA)

The applicant is proposing a land division of two existing parcels totaling 197.56 acres (117.56 acres and 80 acres) into three parcels of 97.34 acres, 45.22 acres, and 55 acres. The smaller of the two parcels (Townsend) is vacant, and two single-family residences currently exist on the larger parcel (Brown). As discussed below, almost the entire area of the parcels is located in native Monterey pine forest habitat, which is defined by the LCP as ESHA (Terrestrial Habitat).

The San Luis Obispo County certified LCP ESHA protection policies are included in Coastal Plan Policies Chapter 6 of the Land Use Element (Environmentally Sensitive Habitat Areas) and Coastal Zone Land Use Ordinance (CZLUO) Sections 23.07.170 through 23.07.178. In addition, the North Coast Area Plan contains specific habitat protection provisions designed to address the particular habitat needs and characteristics of distinct geographic regions. The LCP also includes generalized mapping of sensitive habitats (SRA's) identified at the time of LCP certification.

a. Local Coastal Program Provisions

LCP policies and ordinances define and protect ESHA's, allowing only a very limited amount of development within or near these areas. The LCP is clear about limiting new development in ESHA to resource dependent uses (Policy 1 and CZLUO Section 23.07.170d(2)) and precludes land

or other procedure.” At this time, however, the CCSD has stated that they do not believe this land division, which would reduce the size of Parcel 2 to less than 80 acres, would constitute a breach of the 1997 Agreement. The rationale used by the CCSD to come to this conclusion states that “since the Agreement did allow that Parcel 1 may be subdivided into a maximum of two parcels, the net result remains the same in either case.”



divisions/development within environmentally sensitive habitats and their required setbacks (Policy 4). Vegetation that is rare or endangered, such as native Monterey pines, must be protected and new development must minimize habitat disruptions (Policy 33 and CZLUO Section 23.07.176). The North Coast Area Plan for land divisions near Cambria requires that development be located close to the URL or in open spaces to minimize road construction, public service extensions, and reduce the need to remove native Monterey pine trees. The LCP (CZLUO Section 23.11.030) defines “Environmentally Sensitive Habitat” as:

A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. They include, wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations.

The LCP also contains the following provisions relevant to the protection of environmentally sensitive habitats:

Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats: *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed in the area [THIS POLICY SHALL BE IMPLEMENTED PUSUANT TO SECTIONS 23.07.170-178 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

Policy 4 for Environmentally Sensitive Habitats: *No divisions of parcels having environmentally sensitive habitats within them shall be permitted unless it can be found that the buildable area(s) are entirely outside the minimum standard setback required for that habitat (100 feet for wetlands, 50 feet for urban streams, 100 feet for rural streams). These building areas (building envelopes) shall be recorded on the subdivision or parcel map. [THIS POLICY SHALL BE IMPLEMENTED PUSUANT TO SECTION 23.07.170 OF THE COASTAL ZONE LAND USE ORDINANCE (CZLUO).]*

Policy 33 for Environmentally Sensitive Habitats – Protection of Vegetation: *Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.*

CZLUO 23.07.160 – Sensitive Resource Area (SRA): *The Sensitive Resource Area combining designation is applied by the Official maps (Part III) of the Land Use Element to identify areas with special environmental qualities, or areas containing unique or endangered vegetation or habitat resources. The purpose of these combining designation standards is to require that the proposed uses be designated with consideration of the identified sensitive resources, and the need for their protection, and, where applicable, to satisfy the requirements of the California Coastal Act. The requirements of this title for Sensitive Resource Areas are organized into the following sections:*

23.07.162 *Applicability of Standards*



23.07.164	<i>SRA Permit and Processing Requirements</i>
23.07.166	<i>Minimum Site Design and Development Standards</i>
23.07.170	<i>Environmentally Sensitive Habitats</i>
23.07.172	<i>Wetlands</i>
23.07.174	<i>Streams and Riparian Vegetation</i>
23.07.176	<i>Terrestrial Habitat Protection</i>
23.07.178	<i>Marine Habitats</i>

CZLUO Section 23.07.170 – Environmentally Sensitive Habitats: *The provisions of this section apply to development proposed within or adjacent to (within 100feet of the boundary of) an Environmentally Sensitive Habitat as defined by Chapter 23.11 of this title, and as mapped by the Land Use Element combining designation maps.*

(c) Land Divisions: *No division of a parcel containing an Environmentally Sensitive Habitat shall be permitted unless all proposed building sites are located entirely outside of the applicable minimum setback required by Sections 23.07.172 through 23.07.178. Such building sites shall be designated on the recorded subdivision map.*

(d) Development standards for environmentally sensitive habitats:

- (1)** *New development within or adjacent to the habitat shall not significantly disrupt the resource.*
- (2)** *New development within the habitat shall be limited to those uses that are dependent upon the resource.*

CZLUO Section 23.07.176 – Terrestrial Habitat Protection: *The provisions of this section are intended to preserve and protect rare and endangered species of terrestrial plants and animals by preserving their habitats. Emphasis for protection is on the entire ecological community rather than only the identified plant or animal.*

(a) – Protection of vegetation: *Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of the habitat.*

If questions arise about the precise boundary location of any land use category or combining designation map boundary, the LCP contains procedures to resolve such questions (CZLUO Section 23.01.041c(3)).

CZLUO Section 23.01.041 – Rules of Interpretation: *Any questions about the interpretation or applicability of any provision of this title, are to be resolved as provided by this section.*

c. Map boundaries and symbols: *If questions arise about the location of any land use category or combining designation boundary, or the location of a proposed public facility, road alignment or other symbol or line on the official maps, the following procedures are to be used to resolve such questions in the event that planning area standards (Part II of the Land use Element), do not define precise boundary or symbol location:*

(3) *Where a boundary is indicated as approximately following a physical feature such as a stream, drainage channel, topographic contour line, power line, railroad right-of-way, street or alleyway, the boundary location shall be determined by the Planning Department, based*



upon the character and exact location of the particular feature used as a boundary.

In addition, the North Coast Area Plan (a component of the Land Use Plan portion of the LCP) contains the following standard that applies to lands within the Rural Lands land use category adjacent to Cambria:

Site Planning – New Land Divisions Adjacent to Cambria. *Proposed residential units at a density equivalent to a minimum of one dwelling unit per 80 acres unless a lower density is required by the Coastal Zone Land Use Ordinance (depending upon site constraints), are to be clustered adjacent to the Cambria Urban Reserve Line to minimize the need for new road construction and service extensions; or shall be clustered in open or semi-open areas to minimize tree removal. No structural development shall be allowed on slopes greater than 20%. Water and sewer service shall be developed on-site and not via annexation to the Services District, unless the development site is brought within the Urban Service and Urban Reserve Line. Any Monterey Pines removed during construction shall be replaced. The area shall be developed through the cluster division provisions of the Coastal Zone Land Use Ordinance.*

Finally, the LCP includes generalized mapping of Monterey pine terrestrial habitat, which is specifically identified as a Sensitive Resource Area (ESHA) in the North Coast Area Plan as follows:

Monterey Pine Forests (SRA) – *Native Monterey pines occur in only a few areas along the California coast from north of Santa Cruz to Cambria and on one of the Channel Islands off the Santa Barbara County Coast. While widely grown in the Southern Hemisphere as commercial timber, the Monterey Pine occurs in only three areas of its native California. The southernmost stand in California is the 2,500 acres surrounding Cambria with another isolated 500 acres at Pico Creek. These stands are extremely important as a “gene pool” due to genetic variations found there. Relatively undisturbed strands occur on the Cambria fringe area and in isolated pockets to the north. Monterey pine forests cover most of the Cambria urban area. The larger remaining stands in undeveloped areas should be retained intact as much as possible by use of cluster development in open areas of sparse tree cover and preservation of finer specimen stands through open space easements.*

b. Resource Background - Status of the Monterey Pine Resource³

Monterey Pine Forest ESHA in Cambria

The project site is located within the native range of Monterey pine (*Pinus radiata*) forest. Monterey

³ Sources for some of the information in this section include: *Monterey Pine Forest Conservation Strategy Report*, Jones & Stokes Associates, Inc., prepared for the California Department of Fish and Game, December 1996; *Monterey Pine Forest Ecological Assessment: Historical Distribution, Ecology, and Current Status of Monterey Pine*, Jones & Stokes Associates, Inc., prepared for the California Department of Fish and Game, September 12, 1994; *Pitch Canker in California*, Andrew J. Storer, Thomas R. Gordon, David L. Wood, and Paul L. Dallara (from the Pitch Canker Task Force Web Site April 1999); *Current Status of Pitch Canker Disease in California*, CDF Tree Notes #20, July 1995; *California Forestry Note #110*, CDF, November 1995; *Pitch Canker Action Plan, Appendix D to SLO County North Coast Area Plan public hearing document*, December 1996; *Pine Pitch Canker Task Force Position Paper*, California Forest Pest Council, January 23, 1997; *RFP for “Developing Programs for Handling...Infected Pine Material within the Coastal Pitch Canker Zone...”*, CDF, December 1997; *The Cambria Forest*, Taylor Coffman, Coastal Heritage Press, 1995; *Pebble Beach Lot Program Final Environmental Impact Report*, EIP Associates, June 1997; and *In situ Genetic Conservation of Monterey Pine (Pinus radiata D. Don): Information and Recommendations*. D.L. Rogers. Report No. 26, Genetic Resources Conservation Program, University of California, Davis, September 2002; California Native Plant Society, “A Petition to the State of California Fish and Game Commission,” August 1999.



pine forest is a rare and significant environmentally sensitive plant community. Within its native range, only five populations of Monterey pine forest remain in the world, three of which are in the California coastal zone: the main native stand mantling the Monterey Peninsula; the smaller stand near Año Nuevo in Santa Cruz County; the Cambria stand in North San Luis Obispo County (parts of which are the least disrupted of the remaining groves); and stands on two remote Mexican islands, Guadalupe and Cedros, off the coast of Baja. Each stand is restricted to coastal areas typified by summer fog, poor soils and mild temperatures. Although there is some uncertainty concerning the precise historical distribution of these stands, it is clear that all of them, with the exception of perhaps the Año Nuevo stand, have suffered from extensive losses and fragmentation due to development over the last 50 years. The Guadalupe Island population's survival is uncertain, with no natural regeneration for decades – the result of overgrazing by introduced goats. The three remaining California stands are also threatened by habitat loss, in this case due to development (housing and resort development, golf course development, urbanization), continued fragmentation of the remaining intact forest (by roads and other development), soil compaction and erosion (road grading, recreational overuse), genetic contamination by planted non-local Monterey pines, and invasive exotic plants (genista or “broom”, pampas grass, acacia, eucalyptus, etc.). Commercial logging was an issue in the past, but today is largely confined to firewood cutters and small salvage operations.

As described in the certified North Coast Area Plan, each of the three native stands in California (Año Nuevo, Monterey Peninsula, and Cambria) is geographically isolated from the others and ecologically and genetically unique. The southernmost stand in California is the 2,500 acres surrounding Cambria with another isolated 500 acres at Pico Creek. In addition to their distributional rarity, these stands are extremely important as a “gene pool” due to genetic variations found there.⁴ Relatively undisturbed stands occur on the Cambria fringe area and in isolated pockets to the north. Monterey pine forest covers most of the Cambria urban area. According to biologist V.L. Holland, a comparison of the three naturally occurring mainland populations of Monterey pine shows that members of the Cambria populations have significantly larger cones than do the other populations. Along with the increased cone size there are other distinguishing features of the cones, such as larger apophyses, greater asymmetry, and larger seeds. It has also been noted that the Cambria population probably occupies the driest of the three remaining stands and that the larger cones and seeds may be an adaptation to this drier habitat. In Cambria, Monterey pines are often planted as ornamentals or to replace trees destroyed by construction activity. In the past, little attention has been paid to the source of the trees and they are often replaced from plantation stock, not from the indigenous stock. Accordingly, there is a real danger that the genes from plantation grown plants will dilute the genetic uniqueness of the Cambria pines.⁵

In recognition of this high sensitivity and uniqueness of Monterey pine, the certified SLO LCP identifies Monterey pine forest as terrestrial habitat (TH) to be treated as ESHA, and includes generalized mapping of the pine forest habitat areas known at the time of LCP certification.

Since certification of the LCP, the sensitivity of Monterey pine forest has been further recognized. In 1994 Monterey pine was included on the California Native Plant Society's (CNPS) 1B List, which includes native plants considered to be rare, threatened, or endangered. CNPS List 1B species meet the definitions of threatened or endangered found in Sections 2062 and 2067 of the California Endangered Species Act (CESA), administered by the California Department of Fish & Game Code, and are eligible

⁴ See, also, California Native Plant Society, “A Petition to the State of California Fish and Game Commission,” August 1999

⁵ *Biological Survey of Leffingwell Ranch Cambria, California*, V.L. Holland, Ph.D., Lynne Dee Oyler, M.S., July 30, 1994



for state listing under CESA.⁶ CNPS also uses a system called the R-E-D Code for sensitive species that indicates the overall level of conservation concern for any particular plant, based on its rarity, endangerment, and distribution. In the case of Monterey pine, the CNPS R-E-D code is 3-3-2 (with 3 indicating highest concern) because of its limited number of restricted occurrences (only 5 locations, 3 in California), serious endangerment in California, and its rarity outside of California (but for the small pine forest populations on Guadalupe and Cedros Islands off of Baja, the R-E-D code presumably would be 3-3-3). Reflecting the high level of concern, Monterey pine has been given the highest threat ranking by the California Department of Fish and Game in its Natural Diversity Database (G1, S1.1).⁷ In short, concern for the protection of Monterey pine forest is quite high. In recognition of the high conservation concern for Monterey pine, the species also was placed on the International Union for Conservation of Nature and Natural Resources Red List of threatened species in 1997.

Recent research has also focused on the diversity of Monterey pine forest types and associated special status species that may occur on different marine terrace levels both on granitic substrates and soils derived from Monterey Formation shale. Studies of Monterey pine forest on the Monterey Peninsula suggest that the forest develops different characteristics as a result of soil and climatic conditions found on geomorphic surfaces of different ages, origins, and locations.⁸ For example, in the Del Monte Forest, four major soil types support Monterey pine: marine terrace deposits, dunes, alluvial deposits, and soils developed on pre-Quaternary shale and granite. In addition, six distinct marine terraces of differing ages can be distinguished, and the dunes can be divided into three age categories, each with genetically distinct pine populations. These age differences give rise to what has been termed by some researchers as the “Monterey ecological staircase,” made up of at least eleven distinct subtypes of Monterey pine forest.

As mentioned, the Monterey pine forests in Cambria are threatened primarily by the direct loss of habitat due to development, soil erosion, fire suppression, and the introduction of invasive exotic plants. In addition, fragmentation, pine pitch canker, genetic contamination, and loss of genetic diversity threaten the forest. New development may result in the physical loss of trees as well as impacts to the overall forest habitat and species therein. Fragmentation of Monterey pine forest by continuing development can also create smaller isolated pockets of pine stands. Once a stand is fragmented, the small pockets are more subject to disease and root damage, and overall forest integrity is reduced.

One of the most significant changed circumstances since certification of the LCP has been the emergence of the threat to Monterey pine forest from the pine pitch canker epidemic. Pitch canker was first detected in Monterey pine in California in 1986. Pitch canker was confirmed on the Monterey

⁶ CNPS summarizes the status of List 1B plants as follows: “The 1021 plants of List 1B are rare throughout their range. All but a few are endemic to California. All of them are judged to be vulnerable under present circumstances or have a high potential for becoming so because of their limited or vulnerable habitat, their low numbers of individuals per population (even though they may be wide ranging), or their limited number of populations. Most of the plants of List 1B have declined significantly over the last century.” *CNPS Inventory of Rare and Endangered Plants of California* (2001).

⁷ G1 is a global condition ranking indicating that at the species or natural community level less than 6 viable element occurrences (Eos) OR less than 1,000 individuals OR less than 2,000 acres remain. S1.1 is the corresponding state ranking coupled with a threat ranking, in this case “very threatened”.

⁸ Jones & Stokes Associates, Inc., *The Monterey Ecological Staircase: The Nature of Vegetation and Soils on Different Geomorphic Surfaces on the Monterey Peninsula with an Emphasis on Monterey Pine Forest*, September 1994 and Jones & Stokes Associates, Inc., *Monterey Pine Forest Conservation Strategy Report*, Final Report, December 1996, pp. 1-4.



Peninsula at the Pebble Beach firehouse in April 1992, and then at the Año Nuevo stand in December 1992, followed by the Cambrian stand in November 1994. The California Department of Forestry characterizes the threat of pitch canker to all native Monterey pine stands as “severe.” In 1997, the State Board of Forestry defined a Pitch Canker Zone of Infestation, which includes all coastal counties from Mendocino to Mexico. When the disease was first detected, it was thought that the forest would be incapable of surviving. Since that time, though, more has been learned about the genetic diversity and potential resistance of the Monterey pine species to pitch canker. For example, it has been recognized that there is variability in susceptibility to pitch canker in Monterey pine, indicating that some genetic resistance may exist.⁹ Thus, preserving maximum genetic diversity of the forest may be central to its survival.

Although the Monterey pine is of little commercial importance in the United States as a timber species, it is the most widely planted pine tree in the world. Monterey Pine plantations are of great economic importance to lumber and pulp industries in other counties such as New Zealand and Chile. Thus, the remaining native forests of Monterey pine also constitute the exclusive repository of raw genetic material for developing potential genetic innovations in commercial Monterey pine.

Monterey pine is a sensitive and rare species generally, and it may be that the distinct sub-populations of Monterey pine forest are themselves even rarer and more sensitive. In addition, protecting these unique subtypes of Monterey pine provides a way to preserve the genetic diversity of endemic Monterey pine forest, which contributes directly to the goal of habitat protection. Thus, a recent comprehensive report on *in situ* genetic conservation of Monterey pine presents 18 recommendations for improving conservation of the genetic diversity and thus the health of this limited species. This report includes recommendations to avoid further significant losses of genetic diversity within each of the populations of Monterey pine, and to avoid further fragmentation of remaining Monterey pine forests.¹⁰ The report observes the following with respect to preserving genetic diversity of Monterey pine:

Genetic diversity underlies all biological diversity. It allows local populations of a species to adapt to a variety of niches. It provides evolutionary flexibility for the species to adjust in the long term in response to changing climates and other conditions. Thus, both spatially and temporally, genetic diversity provides a species with the potential to adjust to environmental changes.

The report also concludes that maintaining areas for regeneration and adaptation of Monterey pine forest is important to conserving its genetic diversity and thus its sustainability over time, particularly as climate changes:

To have genetic reserves—perhaps including some lands adjacent to existing forests where possible—is particularly critical for the species because of the historically dynamic relationship between Monterey pine and climate. With climate change and other influences, Monterey pine populations are being severely challenged while having their historic suite of responses—including migration by dispersal—reduced.¹¹

⁹ Jones & Stokes, *Id.* 1996, p. 1-6.

¹⁰ Rogers, Deborah L., *In Situ Genetic Conservation of Monterey Pine* (*Pinus radiata* D. Don): *Information and Recommendations*, September 2002, University of California.

¹¹ Rogers, p. ix-x.



In summary, native Monterey Pine forests are rare and play a special role in ecosystems, such as by providing critical habitat for other rare and unusual species. Each of the five remaining populations of Monterey pine is distinctive. The native pine stands in Cambria represent an important natural resource for California, and the world. Overall, within the native range of Monterey pine, forest habitat areas that have not been substantially developed and urbanized meet the definition of ESHA under the Coastal Act. In addition, individual trees are important due to their special nature as the repository of genetic variability that is crucial for the survival of the species in the face of exotic diseases, and critical for the continued well being of the world's commercial pine plantations. Effective conservation of the diversity within the species requires that each native population be protected. Finally, Monterey Pine forests are demonstrably easily disturbed and degraded by human activities and developments. Therefore, within the native forest habitats, those stands of Monterey pines that have not been substantially developed and urbanized meet the definition of Environmentally Sensitive Habitat Area (ESHA) under the San Luis Obispo County certified LCP.

c. ESHA Identification on the Project Site

One of the most important steps in the development review is to accurately identify the presence of ESHA within or adjacent to the development site. The LCP (CZLUO Section 23.11.030) defines "Environmentally Sensitive Habitat" as:

A type of Sensitive Resource Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. They include, wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats and are mapped as Land Use Element combining designations.

The certified LCP generally uses a map-based system to identify areas where new development needs to be reviewed for conformance with the LCP provisions protecting ESHA. Essentially, the LCP uses "combining designations" as geographic overlays to land use designations that identify particular resources or constraints that need to be considered during the development review process. These geographic "overlays" are useful tools for generally identifying particular areas known to support sensitive habitats. In such areas, the LCP prescribes the need for more detailed project review to avoid or minimize adverse environmental impacts. As described in part on page 7-1 of the Framework for Planning:

Combining designations identify areas with characteristics that are either of public value or are hazardous to the public. The special location, terrain, man-made features, plants or animals of these areas create a need for more careful project review to protect those characteristics, or to protect public health, safety and welfare.

If questions arise about the precise boundary location of any land use category or combining designation boundary, the LCP contains procedures to resolve such questions. Section 23.01.041c(3) states:

Where a boundary is indicated as approximately following a physical feature such as a stream, drainage channel, topographic contour line, power line, railroad right-of-way, street or alleyway, the boundary location shall be determined by the Planning Department, based upon the character and exact location of the particular feature used as a boundary.

In this case, a number of factors were reviewed to determine if the proposed project site qualifies as



Monterey pine forest ESHA. Factors to consider when making an ESHA determination include geomorphic surface type, general health of the forest, loss of habitat area to development, fragmentation of habitat and increased edge effects, health and species composition of the forest understory, and connectivity to other forested areas. It is important to note that Monterey pine forest needs to be understood as a complete and dynamic habitat – understory and overstory, animals and interactions, soils and climates. A forest is a complex, interdependent web of living organisms rather than just a collective noun for a group of trees in the landscaping sense. At issue is preservation of habitat, not simply evaluation of individual tree impacts.

Biology

The Monterey pine forest stand on the Brown/Townsend property is relatively undisturbed and is part of a much larger contiguous forest. The Monterey pine forest here supports unique plant associations with species assemblages that reflect variation in soil, slope, elevation, moisture, and distance from the ocean. The pine forest moderates local climate conditions and provides habitat for endemic plant and wildlife species. Forty special status plant species and two sensitive natural community types are listed in the CNDDB and CNPS databases for the project area (Cambria, San Simeon, Pebblestone shut-in, Lime mountain, Cypress mountain, and Cayucos quadrangles).

According to site-specific biological and botanical studies submitted by the applicant¹², a “healthy” Monterey pine forest covers a majority of the property and grasslands are found in the small forest clearings. In these clearings, hundreds of young pines are growing in a variety of life stages (See photos in Exhibit 6). The forest understory is dominated with perennial herbs, shrubs, and grasses and is described as being in good condition. Both parcels contain large amounts of forest cover and according to the applicant’s own botanical assessment (Althouse and Meade, 2003) the Townsend property (80 acres) “lies entirely within a Monterey pine forest community type (*emphasis added*).”

Suitable habitat exists on the site for a wide variety of special status plant and animal species. Three rare plant species were identified on the property including, Monterey pine (*Pinus radiata*), Cambria morning-glory (*Calystegia subacaulis ssp. episcopalis*), and Obispo Indian paintbrush (*Castilleja dinsiflora ssp. obispoensis*). Field surveys revealed the presence of one rare hawk, Cooper’s hawk (*Accipiter cooperi*), as well as excellent habitat for Southwestern pond turtle (*Clemmys marmorata*), and two-striped garter snake (*Thamnophis couchi*). There is some possibility that California red-legged frogs (*Rana aurora draytonii*) occur on the property in the pooling water of Leffingwell Creek. There is no evidence in the County record of consultation with the California Department of Fish and Game or the U.S. Fish and Wildlife Service regarding the potential presence of red-legged frog.

Site-specific surveys describe both parcels as containing a number of LCP defined sensitive habitat areas including Monterey pine forest, unnamed wetlands, some patches of native grasslands, and a coastal stream/riparian system along Leffingwell Creek located on the northern portion of the properties to which much of the site drains. California annual grassland habitat occurs in open meadows within the Monterey pine forest here. According to the botanical assessments, these grasslands stay moist for long periods of time and occasionally blend into wetland habitat areas that include some wetland plant species. Shallow wetland areas, including a small drainage swale in the center of the Townsend property, were identified in the vicinity of the newly proposed building envelopes. Although these

¹² *Biological Survey of Leffingwell Ranch Cambria, California*, V.L. Holland, Ph.D., Lynne Dee Oyler, M.S., July 30, 1994; *Botanical Survey on 17 of the 80-acre Townsend Property*, Althouse and Meade, Inc., September, 2003.



shallow wetlands have been identified on the property, comprehensive wetland delineations have not been conducted for the entire project site.

The forest area proposed for development is in good health and relatively intact. The most fragmentation and disruption has occurred in the location of Mr. Brown's existing residential compound. There is healthy contiguous Monterey pine forest habitat, and thus habitat connectivity, surrounding the subject property. The photos attached as Exhibits 6 and 9 are extremely helpful in showing connectivity to other forested areas. Even smaller stands of Monterey pine forest may be considered ESHA if the health of the stand is good, particularly if there is a healthy understory with a strong assemblage of other native and sensitive plant species present. The rare and special plant species present on the project site, combined with a healthy understory and good tree condition indicate the health of the project site stand is optimal. Based on the biological evidence, nearly the entire project site is Monterey pine forest habitat (See Exhibit 8 for CCC biologist ESHA determination and Exhibit 9 for aerial depiction).¹³

Maps

As described previously, the LCP generally uses a map based system to identify areas where new development needs to be closely reviewed for conformance with the LCP provisions protecting ESHA and uses "combining designations" as geographic overlays that identify particular resources or constraints that need to be considered during the development review process. In this case, the LCP maps two areas on the project site as being covered by the native Monterey pine forest Terrestrial Habitat (TH) combining designation. These designations were made around 1988, apparently reflecting the presence of large clusters of Monterey pine forest trees on-site at that time, and do not include all habitat areas, saplings, outlying trees, or fringe areas suitable for forest regeneration. These maps do not accurately depict the forest habitat as it exists on the ground today. As discussed previously, though, they are a general indicator for the need for further review of potential sensitive resources in this development application. These mapped areas cover roughly one third of the total project site (See Exhibit 2).

In instances where SRA combining designations are present on the project site, the LCP prescribes the need for more careful project review to satisfy the ESHA protection requirements of the LCP. In addition to site-specific biological studies, which as discussed above show the site to be largely Monterey pine forest habitat, Staff has evaluated a series of aerial photographs from 1978 showing new growth and transformation of the onsite forest. The aerial photographs demonstrate that there has been substantial pine recruitment over the past 25 years. Interior clearings are surrounded by pine trees and the habitat is clearly appropriate for the Monterey pine. The photos show that the two mapped SRA areas have actually grown in size, and in some areas have merged together, resulting in greater habitat connectivity and a larger contiguous tree canopy. In some instances, solid forest canopy is easily identifiable outside of the mapped boundaries (See Exhibit 6 - 2 of 4).

Clearly, the LCP maps do not provide an up-to-date accurate depiction of the Monterey pine forest resource, as it exists on the ground today. But this reality is contemplated by the LCP through the

¹³ The only area for which this determination has not been made conclusively is that portion of the property between Highway One and the more forested area directly inland of it. Additional study of the soils and past land management practices there (like discing/mowing etc.) would be required to conclude. In this case, though, it need not be determined conclusively for this area as no new development that would adversely impact this area is being proposed (If there were, though, such development might be inconsistent with the LCP for a variety of other reasons (e.g., steep slopes, directly within the viewshed, etc.).



applicable rules of interpretation. The LCP rules of interpretation CZLUO Section 23.01.041c(3) states:

c. Map boundaries and symbols: If questions arise about the location of any land use category or combining designation boundary, or the location of a proposed public facility, road alignment or other symbol or line on the official maps, the following procedures are to be used to resolve such questions in the event that planning are standards (Part II of the Land Use Element), do not define precise boundary or symbol location:

(3) Where a boundary is indicated as approximately following a physical feature such as a stream, drainage channel, topographic contour line, power line, railroad right-of-way, street or alleyway, the boundary location shall be determined by the Planning Department, based upon the character and exact location of the particular feature used as a boundary.

In this case, the particular physical feature used as the boundary for the mapped SRA (combining designation) is the Monterey pine forest terrestrial habitat (TH). Therefore, to the extent there may be a question about the location of the TH boundary in this case, under the LCP the identification of the mapped SRA Monterey pine forest boundary is to be based on where the resource is actually on the ground. Thus, even though the existing SRA maps of the Monterey pine habitat on the Brown site don't correspond directly with actual resources, the LCP directs that this discrepancy be resolved based on the physical features of the resource that is mapped – i.e. the sensitive resource boundary is determined by actual on-the-ground forest habitat conditions.

It should be noted that the issue of reconciling outdated LCP maps with actual resource conditions was detailed in the Commission's review of the Periodic Review of the San Luis Obispo County LCP adopted by the Commission in July 2001. The County has recently responded to the Commission's concern in their most recent Periodic Review Implementation LCP amendment submittal to the Commission (SLO-MAJ-1-03). In that submittal, which the Commission certified on February 20, 2004 and that is now in effect, the County incorporated the Commission's suggested modification that more specifically and directly references the rules of interpretation for resolving questions regarding projects which may be appealed to the Coastal Commission based on the location of development within a Sensitive Resource Area. As stated by the Commission's findings on page 37 of SLO-MAJ-1-03 (Phase 1 Periodic Review Implementation) the purpose of this modification was to clarify that "the location of development in relationship to sensitive resource areas must be determined in accordance with the actual location of the resource, rather than a depiction on a map". Specifically, the LCP states in significant part:

CZLUO Section 23.01.043(c) - Appealable development. *As set forth in Public Resources Code Section 30603(a) and this title, an action by the County on a permit application, including any Variance, Exception, or Adjustment granted, for any of the following projects may be appealed to the California Coastal Commission:*

- (1) Development approved between the sea and the first public road paralleling the sea, or within 300 feet of the inland extent of any beach (or of the mean high tide line of the ocean where there is no beach), whichever is the greater distance, as shown on the adopted post-certification appeals maps.*
- (2) Approved developments not included in subsection c(1) of this section that are proposed to be located on tidelands, submerged lands, public trust lands, within 100*



feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff as shown on the adopted post-certification appeals maps.

- (3) *Developments approved in areas not included in subsection c(1) or c(2) that are located in a Sensitive Coastal Resource Area, which includes:*

(i) Special marine and land habitat areas, wetlands, lagoons, and estuaries mapped and designated as Environmentally Sensitive Habitats in the Local Coastal Plan.

...

The procedures established by Section 23.01.041 c. (Rules of Interpretation) shall be used to resolve any questions regarding the location of development within a Sensitive Coastal Resource Area (underline added).

In conclusion, the Commission finds that the Monterey pine forest habitat that exists on the project site is ESHA under the SLO LCP and does constitute mapped Terrestrial Habitat to be protected pursuant to the policies cited above.

ESHA Conclusion

Native Monterey pine stands only occur in five relatively small and separate locations. Native Monterey pine forest habitat is rare and seriously at risk in California, and is nearly non-existent outside of California. Monterey pine is included on CNPS's 1B List because of its status. For these reasons, the proposed project's location in an area of Monterey pine forest habitat requires that an ESHA determination be made. As discussed above, there are a number of factors that should be evaluated to determine whether the proposed project site is ESHA. These factors include evaluating the general health of the forest on the project site, determining the project site's geomorphic surface type, assessing the level of fragmentation and level of development in and around the project site, describing the health and species composition of the forest understory, and examining the level of connectivity of the project site to other nearby forested sites.

A number of factors support the designation of the project site as ESHA. As described in the biological studies, most of the property contains a rich mosaic of habitat types (e.g., wetlands, streams and riparian, grasslands), and high quality Monterey pine forest with trees in all life stages. The property is contiguous with large tracts of remaining undeveloped Monterey pine forest and supports rare and sensitive plant and animal species. The presence of seedlings on the project site indicates a healthy forest where Monterey pine regeneration is taking place. The Commission's biologist has reviewed the evidence, and after carefully weighing all the above factors, it has been determined that the vast majority of the site is ESHA (see Exhibits 8 and 9).

e. Impacts to Monterey Pine Forest ESHA

The LCP requires that adverse impacts to ESHA have been avoided. This is done through a combined approach of limiting allowable uses in ESHA (Policy 1 and CZLUO Section 23.07.170d(2)), and implementing LCP standards that ensure that the proposed use is compatible with the biological continuance of the ESHA. There are many LCP provisions that prohibit new development which would



significantly disrupt or threaten the continuance of sensitive habitats. Among the most important with respect to land divisions is CZLUO Section 23.07.170c, which prohibits land divisions in ESHA unless all building sites are located entirely outside of the minimum setbacks established by the LCP. As described above, the subject parcels are located within a much larger indigenous Monterey pine forest and thus are located almost entirely within an ESHA. The proposed development areas are located entirely within ESHA. It should also be pointed out that the proposed access roads for the project are shown bisecting an area currently mapped as an SRA in the LCP.

An important way of avoiding impacts to ESHA is by limiting the types of uses allowed within such areas. The LCP limits new development in ESHA to resource dependent uses. LCP ESHA Policy 1 states in part:

Within an existing resource, only those uses dependent on such resources shall be allowed within the area.

Sections 23.07.170d(2) implements this policy and states:

New development within the habitat shall be limited to those uses that are dependent on the resource.

Inconsistent with the LCP, the County approved land division is not a use dependent on a location within the pine forest ESHA

In addition to the creation of a new parcel in ESHA, the proposed project designates approximately 20 acres of environmentally sensitive habitat for future residential building envelopes that are within ESHA. It is expected that large portions of the building envelopes will be covered with structures including residences, accessory buildings, barns, workshops and impermeable surfaces such as access roads, fire turnarounds, porches, walkways etc., similar to the development of the Brown site. Structural development within these areas will result in a permanent loss of habitat as well as fragmentation of the pine forest. Additional disruptions will result from residential site preparation, landscaping, and subsequent use of the site. Such activities may include: installation of a storm drain systems, utility trenching, and over the long run ordinary residential activities on the premises such as driving along access roads and allowing pets and people in the habitat area. None of these development activities are dependent on a location within the native Monterey pine forest, but will individually and collectively, result in a significant disruption and destruction of the environmentally sensitive forest habitat areas on site.

Even if a land division to support residential use was allowed within ESHA (which it is not), the LCP contains numerous standards to avoid adverse impacts to ESHA. Among the most important with respect to land divisions is ESHA Policy 4 and CZLUO Section 23.07.170(c), which prohibit the creation of new lots where the proposed building sites do not comply with LCP setback requirements. The most stringent of these setback requirements is the 100-foot setback from ESHA established by Coastal Plan Policy 1 for ESHA and Section 23.07.170 of the CZLUO. The County approved site plan is inconsistent with the 100' setback requirements because it allows the proposed development sites within ESHA and shows new access roads bisecting mapped Monterey pine forest ESHA. In this case, the LCP setback requirements clearly haven't been met. Forest fragmentation and disruption is unavoidable if the new residential development and access roads are developed in this location.

Impacts to the pine forest caused by this land division and subsequent residential development go far



beyond simply removing trees. The construction of new access roads and homes increase the amount of impervious surface, which can lead to increased erosion on adjacent habitats. Moreover, development can lead to the fragmentation of previously connected habitat, and introduces light, noise, domestic pets, and other human influences that can reduce the health and biological productivity of surrounding habitats. The LCP contains standards aimed at minimizing impacts to sensitive terrestrial habitats such as Monterey pine forest terrestrial habitat (Policy 33 for ESHA and CZLUO Section 23.07.176). In addition, CZLUO Section 23.07.164 requires that any proposed clearing of trees or other features be the minimum necessary to achieve safe and convenient access and not create significant adverse effects on the identified sensitive resource. As stated in the LCP, the emphasis of CZLUO Section 23.07.176 is on the “entire ecological community” rather than only the identified plant or animal.

In addition, residential development brings with it fire suppression concerns and requirements (such as defensible clear space around the house), resulting in the possibility of heightened tree removal and ground clearing. It seems likely that the fire suppression concerns and/or requirements would lead to future removal of indigenous Monterey pine forest habitat at this site. Furthermore, prescribed and natural burns within such Monterey pine forests can be extremely important for the continued vitality of the forest resource. Residential development within the forest presents a conflict pursuing such management techniques due to concerns for residential structures. In this case, the location of any residential use is better accommodated on the edge of the forest as approved by the Commission’s 2002 action on the Townsend site.

Finally, North Coast Area Plan standards for land divisions adjacent to Cambria are used to minimize tree removal. North Coast Area Plan site planning standard (Rural Lands Standard 2) states in part:

Proposed residential units...are to be clustered adjacent to the Cambria Urban Reserve Line (URL) to minimize the need for new road construction and service extensions; or shall be clustered in open or semi-open areas to minimize tree removal.

The County approved project raises concerns with respect to both parts of this standard. First, the County approved project shows the proposed building envelopes in the interior of the parcel, nearly one-half of a mile from the URL and roughly one-quarter mile from the nearest access on Cambria Pines Road. This is inconsistent with the LCP because the newly proposed residential units are not adjacent to the URL as required by the Rural Lands Standard 2, and locating development on the interior of these large parcels will require lengthy service connections and road construction. Selecting areas in the center of the forest will result in significant groundcover disturbance and extensive removal of endangered Monterey pine habitat. The County approved project allows for up to 30 sensitive Monterey pine trees to be removed in order to accommodate the proposed access roads and utility connections. Although the applicant has submitted recent data showing that roads and services can be constructed without complete removal of mature Monterey pines, the paving of access roads with impermeable surfaces and trenching for utilities can significantly disturb surrounding trees and soils and can cause heightened erosion to adjacent habitats. Indeed, the new building sites recognized by the County are located in forest clearings, however these open areas contain numerous smaller pine trees growing in various life stages. According to page 15 of the 2003 botanical assessment by Althouse and Meade, Inc., “Hundreds of young Monterey pines occur in the building envelope” (see Exhibit 6 for photos). While the applicant contends that mature Monterey pines (8” diameter or larger) will not be removed, the younger saplings that are important for long-term forest regeneration will be destroyed and re-growth areas will be paved over or built on. The applicant also contends that the area selected for future



residential development is consistent with the North Coast Area Plan standard for land divisions adjacent to Cambria because they are located in open or semi-open areas. While these areas don't have any large Monterey pine trees in them now, they did in the past as evidenced in the applicant's own botanical survey which identifies several cut stumps of mature Monterey pine trees within the proposed building envelopes (reference pg. 5, w/ photo and caption pg. 6, *Botanical Survey*, Althouse and Meade, September 2003).

These areas also contain "hundreds" of small pine saplings. The site conditions shown by aerial photographs, as well as site-specific biological surveys, therefore demonstrate that the building envelopes recognized by the County approval are not sized or located in a manner that is most protective of coastal resources, especially in light of the fact that the Commission has already approved an appropriate building site on the southeast corner of the Townsend parcel near Cambria Pines Road (see Exhibit 7), that is now proposed to be shifted into the heart of the forest.

f. Inconsistencies

The Applicants, Brown and Townsend, propose to subdivide two existing parcels into three, and develop access roads and building sites to support future residential development. This project is fundamentally inconsistent with the San Luis Obispo County LCP and cannot be approved. LCP Policy 1 requires that development within or adjacent to ESHA shall not disrupt the resource, and only those uses dependent on the resource shall be allowed. As established in the above findings, the project is located within Monterey Pine forest ESHA and is not resource dependent. Furthermore, the applicant has not demonstrated that the project can be developed without significantly disrupting the sensitive Monterey pine forest habitat. Therefore, this development is inconsistent with LCP policies protecting ESHA, which allows only resource dependent uses within the area, and must be denied.

The LCP requires that all land divisions identify the location of future building sites and access roads. The location of these features must be designed to avoid ESHA impacts. The land division designates roughly twenty acres, or 10% of the total property, to development envelopes that are located in the interior of the project site. The Brown site is already developed with a building envelope of roughly twelve acres. Thus, the proposed project will commit roughly eight additional acres or 4% of the site to future development envelopes. The large sizes of the building envelopes do not effectively limit future development to the least sensitive areas of this highly sensitive site. Moreover, the location of the building site exacerbates the impacts of future development on ESHA by fragmenting forest habitat, and increasing the amount of disturbance by necessitating significant access improvements. These building sites are inconsistent with LCP ESHA protection provisions (e.g., ESHA Policies 4 and 33, CZLUO Sections 23.07.170-178 and 23.07.164 of the CZLUO) because it does not locate building sites outside of ESHA and their setbacks or minimize disruption of sensitive terrestrial habitats.

g. Alternatives

There is no entitlement to subdivide and given the numerous site constraints, creation of a third parcel in this area would not be allowed under the LCP. The Brown parcel is already developed with a large residential compound and the Townsend parcel has already been approved, if reconfigured, for a less environmentally damaging building site (A-3-SLO-00-045). In A-3-SLO-00-045 the Commission found it essential to reduce the size of the building site, and locate it as close to Cambria Pines road as



possible. This location minimized tree removal and habitat disturbance, and moved the future residential use adjacent to already developed areas. As shown in Exhibit 7, the clearing in the southeast corner of the project site is most consistent with ESHA protection standards, as it avoids the need to construct a long driveway to access the building site, which will remove sensitive features and habitats of the site inconsistent with ESHA Policy 33 and CZLUO Section 23.07.176, as well as intrude upon ESHA and its setbacks inconsistent with ESHA Policy 4 and CZLUO Section 23.07.170(c). Moreover, locating a building site in the southeast corner of the Townsend parcel will prevent the fragmentation of the habitat area and minimize habitat disruption, as required by CZLUO Sections 23.07.170(d) and 23.07.176. This building site is located closer to the URL and public access roads and will minimize tree removal in accordance with Area Plan Standard 2. This site has a water meter and there does not appear to be any constraint to developing the site with a single-family home.

h. ESHA Conclusion

The proposed land division is not dependent on siting within the ESHA and does not meet any of the other tests for allowing development within ESHA. The land division approved by San Luis Obispo County is inconsistent with LCP requirements prohibiting residential development in ESHA and the creation of new lots where building sites do not comply with LCP ESHA setback requirements. Moreover, the building sites recognized by the County approval require access improvements that would adversely impact forest habitats, and the envelopes are not sized or located in a manner to avoid and minimize the impact of future development on the Monterey pine forest habitat. The clearing of trees, understory, and groundcover, is not the minimum necessary to achieve safe and convenient access. This development will create significant adverse effects on the sensitive Monterey pine forest. **For all of the reasons discussed above, the project must be denied.**

2. Public Services

A. Local Coastal Program Provisions

As required by Public Works Policy 1, all new development must demonstrate that there is sufficient water supply to serve the development:

Public Works Policy 1: Availability of Service Capacity

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable...

This policy is implemented by CZLUO 23.04.430:

CZLUO Section 23.04.430 - Availability of Water Supply and Sewage Disposal Services: *A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate water and sewage disposal capacity available to serve the proposed development, as provided by this*



section . . .

B. Analysis

Background

Since passage of the Coastal Act, the Commission has recognized that Cambria's limited water supplies place a serious constraint on the buildout of this community. Concerns regarding the adequacy and reliability of Cambria's water supplies have been coupled with concerns that excessive withdrawals from San Simeon and Santa Rosa creeks will have significant adverse impacts on environmentally sensitive habitat areas. These concerns are detailed in the Commission's review of the North Coast Area Plan Update proposed by the County in 1997, and in the Periodic Review of the San Luis Obispo County LCP adopted by the Commission in July 2001. This analysis is incorporated by reference into these findings.

Recent events have reaffirmed the tenuous situation of Cambria's water supply. On October 25, 2001 the CCSD Board of Directors considered whether to pursue the declaration of a water shortage emergency. At that meeting, the Board of Directors determined that sufficient evidence existed to consider the declaration of a water shortage emergency based on an inability to accommodate the anticipated growth of the community in the near future. At this same meeting the Board voted to approve thirty-eight (38) intent-to-serve letters. On November 15, 2001 the CCSD Board of Directors declared a water emergency. Part of this action included not allowing any additional intent-to-serve letters to be issued (i.e. anything beyond those that were issued during the October 25, 2001 meeting).

Through the declaration of a moratorium on new water connections, the CCSD has taken a critical step in curbing short-term development potential in Cambria. This action, in turn, has generally limited County approval of coastal development permits in Cambria to those projects that obtained a commitment of water services prior to November 15, 2002. However, these rules don't apply to this project because the Applicant is proposing to move an existing meter to serve the new development.

Analysis

LCP Public Works Policy 1 requires that new development demonstrate the availability of adequate public services, including domestic water supplies, prior to being permitted. In terms of this coastal development permit analysis, the creation of new parcels through land divisions such as this, coupled with the significant outstanding concerns regarding the adequacy of water supplies for existing commitments in Cambria, raise issues regarding compliance with LCP Public Works Policy 1, which states:

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable...

Contrary to this Policy, and as described above, it is unclear that there is adequate water available to serve both the proposed development and other outstanding commitments, and at the same time comply with LCP standards protecting ESHA. Accordingly, new development, particularly the creation of new



developable parcels, that will place additional demands on Cambria's limited water supplies cannot be approved consistent with the requirements of LCP Public Works Policy 1.

Currently, the Applicant (Brown) has two existing water meters in use. One meter serves the larger of two primary residences (10,000 sq. ft.) and the other serves the smaller (1,200 sq. ft.). Both are on his 117.56-acre parcel. To serve the new parcel to be created by this land division, the County required that domestic water supplies be obtained by converting the small house (1,200 s.f.) on Mr. Brown's parcel to "storage", then transferring the water meter to the new parcel.

First, this raises concern with respect to the long-term enforceability of the County's requirement. As discussed, the existing 1,200 SFD would be converted to "storage" and the water meter transferred. The water meter will then be used to serve the newly created 45.22-acre parcel and support new residential development. Because there is another active water meter serving a larger residence on the Brown site enforcement of the condition requiring the permanent conversion of the existing SFD to storage may be somewhat problematic.

More importantly, this water transfer scheme will result in additional water use. A comparison of water use between the two existing residences shows that the smaller 1,200 square foot SFD uses considerably less water than the larger 10,000 square foot SFD. Bi-monthly water bills supplied by the County show that the larger 10,000 SFD used anywhere between 32 and 277 units of water, whereas the smaller 1,200 square foot SFD used between 9 and 33 units of water.¹⁴ This is likely due to the fact that it is relatively much smaller in size, as well as the fact that the meter is not accounting for all of the accessory uses and amenities associated with the larger estate home, such as barns, workshops, ponds, fountains, and ornamental landscaping for lawns and putting greens. All of these uses and amenities require significant amounts of water. Zoning in the Rural Lands category allows for similar multiple residential and accessory uses on the newly created parcel. It is likely that the new building site would be developed to its maximum potential and the amount of water demanded would be similar to that of the larger existing residential estate development on the Brown site (approximately 3 to 20 times that of the typical Cambria SFD).

c. Public Services Conclusion

Clearly, the anticipated water use for a newly created parcel with multiple residential structures would be much greater than that of the single 1,200 square foot primary residence from which the water meter was transferred. The result of this transfer scheme is a substantial net increase in water demand. Given the uncertainty of sustainable water supplies in Cambria combined with the large number of already outstanding commitments, the appropriateness of this transfer scheme is called into question. This is especially true when used to allow new land divisions and development of large residential estates at a time when the community is in a water supply shortage. This transfer scheme does not demonstrate the availability of adequate public services to serve new subdivisions, particularly when there is considerable uncertainty about sustainable water supplies to serve existing lots in Cambria. This project is fundamentally inconsistent with Public Works Policy 1, and should be denied.

¹⁴ 1 unit of water = 748 gallons. This range (32-277) represents considerably more water use than a typical SFD in Cambria. A typical SFD in Cambria uses 10- 12 units of water bi-monthly. Thus the large residence is using from 3 to 20 times the amount of water most homes in Cambria use.



E. California Environmental Quality Act (CEQA)

Public Resources Code (CEQA) Section 21080(b)(5) and Sections 15270(a) and 15042 (CEQA Guidelines) of Title 14 of the California Code of Regulations (14 CCR) state in applicable part:

CEQA Guidelines (14 CCR) Section 15042. Authority to Disapprove Projects. [Relevant Portion.] *A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.*

Public Resources Code (CEQA) Section 21080(b)(5). Division Application and Nonapplication. ...*(b) This division does not apply to any of the following activities: ... (5) Projects which a public agency rejects or disapproves.*

CEQA Guidelines (14 CCR) Section 15270(a). Projects Which are Disapproved. *(a) CEQA does not apply to projects which a public agency rejects or disapproves.*

Section 13096 (14 CCR) requires that a specific finding be made in conjunction with coastal development permit applications about the consistency of the application with any applicable requirements of CEQA. This staff report has discussed the relevant coastal resource issues with the proposal. All above LCP conformity findings are incorporated herein in their entirety by reference. As detailed in the findings above, the proposed project would have significant adverse effects on the environment as that term is understood in a CEQA context.

Pursuant to CEQA Guidelines (14 CCR) Section 15042 “a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.” Section 21080(b)(5) of the CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the project were approved as proposed. Accordingly, the Commission’s denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, does not apply.

